

The Appeals Board adopts the stipulations listed in the March 17, 1994 Award.

ISSUES

The Special Administrative Law Judge awarded benefits based on a twelve percent (12%) disability for claimant's hernia and complications from the surgery for that hernia. Both parties request modification of the finding by the Special Administrative Law Judge relating to the nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of both parties, the Appeals Board finds claimant's award should be limited to the twelve (12) weeks of benefits afforded under K.S.A. 44-510(d)(22) for hernia injury. Claimant suffered a hernia in November of 1990 while lifting at work. Dr. Naldoza performed surgery on December 27, 1990. Following the surgery claimant lost sensation in his scrotum, general right abdominal wall and right upper thigh. The hernia involved in this claim was the fourth operated hernia claimant experienced.

Three physicians testified regarding the surgery for the current injury and the residual affects. Dr. Naldoza, the operating surgeon, testified that because of the prior surgeries, it was impossible to locate and isolate the ilioinguinal nerve. He agreed that numbness in the region innervated by the ilioinguinal nerve was probably the result of the hernia repair he performed. Dr. Schlachter testified from his examination that there had been an excision of the right inguinal nerve. In his opinion claimant suffered a two percent (2%) general body disability due to the severance of the ilioinguinal nerve. He gave claimant an additional ten percent (10%) rating due to weakness of the abdominal wall, secondary to mesh repair of the hernia. He combined the ratings to give a total of twelve percent (12%) general body disability rating. He recommended that claimant not lift over twenty-five (25) pounds. He also indicated that in his opinion claimant should not have lifted over thirty (30) pounds prior to the November 1990 injury.

Finally, Dr. David E. Street, a board-certified general surgeon, testified that claimant should maintain a weight-lifting restriction. He concluded, however, because of the addition of the mesh, the floor was more stable than it had been before. He described the ilioinguinal nerve as purely a sensory nerve, not a motor nerve. He agreed that lifting restrictions should be twenty-five (25) pounds. He also indicated that the restrictions should have been the same before this latest accident. He gave no opinion regarding what caused the damage to the ilioinguinal nerve. He did conclude, however, there was no impairment of function attributable to this surgery or resulting loss of sensitivity. He found that claimant ambulates normally, there is no swelling, there is no artificial malfunction, there is no gait imperfection, and no loss of muscle strength.

In the review of the record as a whole, the Appeals Board agrees with the conclusion reached by Dr. Street, that the surgery resulted in some numbness but does not, in this case, justify a rating for loss of function or an additional impairment or functional impairment rating beyond the schedule provided for hernias in K.S.A. 44-510(d)(22).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated March 17, 1994, should be, and hereby is, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Charles E. Jeffery, and against the respondent, Wichita Boeing Employees Association, and its insurance carrier, Cigna Property and Casualty, for an accidental injury which occurred on November 9, 1990, and based upon an average weekly wage of \$334.00 for 12 weeks of disability compensation at the rate of \$222.68 per week in the sum of \$2,672.16, all of which is past due and owing as of the date of this Award and, if not already paid, it should be paid in one lump sum.

Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Barber & Associates Transcript of Regular Hearing	\$212.45
Deposition of Faustino M. Naldoza, M.D.	\$230.50
Alexander Reporting Co. Deposition of Ernest R. Schlachter, M.D.	\$145.20
Deposition of Jerry D. Hardin	\$318.00
Don K. Smith & Associates Deposition of David E. Street, M.D.	\$247.50
AAA Reporting Company Deposition of Michael J. Dreiling	\$253.28

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Michael L. Snider, Wichita, KS
W. Walter Craig, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Steven L. Foulston, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director